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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Roberto Pedro Barcala

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EXAMINER

ALIE, GHASSEM

ART UNIT

PAPER NUMBER

3724

DATE MAILED: 08/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/707,899

Applicant(s)

BARCALA, ROBERTO PEDRO

Examiner

Ghassem Alie

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on the filing date of the application.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 January 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Drawings

1. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because the drawings are not according to US practice. Different parts or sections of the invention in the drawings must be identified by reference numbers not by texts or names. See 37 CFR 1.84 (p). Each drawing sheet also must be numbered. It should be noted that the drawing in cited prior art can be considered as examples of drawings according to US practice. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

Specification

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the specification fails to teach that the fitted sleeve is from of hardened plastic as set forth in claim 1. The fitted sleeve of hardened plastic lack antecedent basis.

3. The disclosure is objected to because of the following informalities: the specification fails to identify the parts and sections of the instant invention in the drawings with reference numbers. There are also dimensions and other parts in the drawings that are not discussed in the specification. For examples dimensions in Fig. 1d are not discussed in the specification.

In paragraph 30, line 4, "said tines" should be --the tines--.

Appropriate correction is required.

Claim Objections

4. Claim 1 is objected to because of the following informalities: “;” in the end of the claims should be --.--. Each claim must end with a period instead a semicolon. Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claim 4, “said trigger assembly” lacks antecedent basis.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

Obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patent ability shall not be negative by the manner in which the invention was made.

8. Claims 1 and 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thompson (2,804,336). Regarding claim 1, Thompson teaches a self-clearing device that is capable of being used as a grilling fork including a handle 16 and a hollow elongated cylindrical outer shaft 10 having opposite proximal and distal proximal ends and it is connected to the handle 16 at the proximal end. Thompson also teaches a pair of spaced apart tines 31 located at the distal end of the outer shaft 10. These tines ate capable of supporting

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food. Thompson also teaches a form fitted sleeve 11 connecting the distal end of the outer shaft to the tines 31. Thompson also teaches a food removal plate 28 positioned on and straddling the tines 31. Thompson also teaches that the plate 11 connecting tow apertures to allow the tines 31 to slide through. Thompson also teaches an elongated cylindrical inner shaft 20 inside the hollow outer shaft 10 and having opposite proximal end and distal end. Thompson also teaches that the distal end of the inner shaft 20 extending beyond the distal end of the outer shaft and connecting to the food removal plate 28. See Figs. 1-3 and col. 1, lines 169-72 and col. 2, lines 1-64 in Thompson. The pick-up tool of Thompson is capable of being used as a grilling fork such as shown in Cesare (2,783,535) or Livingston (2,420,710). Thompson does not expressly teach that the tines are made of stainless steel and the fitted sleeve is made of hardened plastic. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the tines from stainless steel and the fitted sleeve form hardened plastic, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. See also *Ballas Liquidating Co. v. Allied industries of Kansas, Inc.* (DC Kans) 205 USPQ 331. In addition, the use of tines made of stainless steel is well known in the art such as evident in Archard et al. (5,983,783). The use of plastic hardened material in tools are well known in the art such as taught by Gatch (5,642,911) or Lam (2002/0017048).

Regarding claim 4, as best understood, Thompson teaches everything noted above including a trigger assembly 43 is connected to the proximal end of the inner shaft 22 that extends into the handle. See Fig. 2 in Thompson.

Regarding claim 5, Thompson teaches everything noted above including that the inner shaft 20 is connected at its distal end to the food removal plate 28 positioned on and straddling the tines 31. See Fig. 2 in Thompson.

Regarding claim 6, Thompson teaches everything noted above including that the food removal plate 28 is moved forward and backward along the length of the tines by the action of the inner shaft 20 that is connected to. See Fig. 2 in Thompson.

9. Claims 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Thompson in view of Kruskamp (2002/0182318) or McCallops (2002/0104666), hereinafter McCallops. Regarding claim 2, Thompson teaches everything noted above including that the handle is ergonomically shaped. Thompson does not teach that the handle has a textured grip for a more secure grip. However, the use of ergonomically shaped handle having textured grip is well known in the art such as taught by Kruskamp or McCallops. Kruskamp teaches a handle 4 which is ergonomically shaped and has a textured grip. See Fig. 1 and page 2, paragraph 20. McCallops also teaches a handle 60 which is ergonomically shaped and has a textured grip 63. See Fig. 1 and page 2, paragraph 19. It would have been obvious to a person of ordinary skill in the art to provide the handle of Thompson self-clearing fork with the textured grip as taught by Kruskamp or McCallops in order to provided the friction needed for providing a good grip.

10. Claims 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Thompson in view of Naff, Jr. (4,655,495), hereinafter Naff. Regarding claim 3, Thompson teaches everything noted above including that the handle contains a trigger assembly 43 inside extending through the bottom of the handle. See Fig. 2 in Thompson. Thomson dose not

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teach that a coil spring is inside the handle. However, the use of trigger mechanism having a coil spring inside a handle is well known in the art such as taught by Naff. Naff teaches a handle 12 including a trigger mechanism 44 having a coil spring 22. See Fig. 1 and col. 4, lines 1-51 in Naff. It would have been obvious to a person of ordinary skill in the art to provide the handle of Thompson self-clearing fork with the coil spring as taught by Naff in bias the trigger mechanism and facilitated the used of the trigger mechanism by the operator.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Wyly. JR. (1,747,039), Homola (2,873,522), Becker (2,521,032), Thomas (1,678,368), Huie (1,801,084), and Perry (3,233,325) teach a self-clearing grilling fork having a handle including a coil spring.

Ritchie (5,975,909) and Meyers et al. (6,105,259) teach an ergonomically shaped handle including a textured grip.

Klausman et al. (2,695,188), Andros (2,167,411), Kaminski (2,483,546), Alsen (2,827,848), Williams (1,172,333), Davis (4,103,420), Haberstick (3,183,031), Ciaglia (2,730,802), and Solinski et al. (2,363,702) teach a self-clearing grilling fork having a pair of tines and a food removal plate.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ghassem Alie whose telephone number is (703) 305-4981.

The examiner can normally be reached on Mon-Fri 8:30 am - 5:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan Shoap can be reached on (703) 305-1082. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9302 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

GA/ga

August 24, 2004



Allan N. Shoap
Supervisory Patent Examiner
Group 3700